United Nations S/PV.5125

Security Council

Sixtieth year

Provisional

5125th meeting

Wednesday, 16 February 2005, 4 p.m.
New York

President:	Mr. Adechi	(Benin)
Members:	Algeria	Mr. Benmehidi
	Argentina	Mr. Mayoral
	Brazil	Mr. Valle
	China	Mr. Wang Guangya
	Denmark	Mr. Faaborg-Andersen
	France	Mr. De La Sablière
	Greece	Mr. Vassilakis
	Japan	Mr. Oshima
	Philippines	Mr. Baja
	Romania	Mr. Motoc
	Russian Federation	Mr. Denisov
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry
	United Republic of Tanzania	Mr. Mahiga
	United States of America	Mr. Holliday

Agenda

Reports of the Secretary-General on the Sudan

Letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/60)

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05-24049 (E)

The meeting was called to order at 4.20 p.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

Letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/60)

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Louise Arbour, United Nations High Commissioner for Human Rights.

It is so decided.

I invite Ms. Arbour to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them the following documents: S/2005/60, containing a letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council transmitting the report of the International Commission of Inquiry on Darfur, and S/2005/68, containing the report of the Secretary-General on the Sudan.

I should also like to draw the attention of the members of the Council to letters dated 8 February 2005 and 23 January 2005 from the Sudan, which will be issued as documents S/2005/77 and S/2005/80, respectively.

I welcome the presence of the Secretary-General, Mr. Kofi Annan, and invite him to take the floor.

The Secretary-General: I am very pleased that the High Commissioner for Human Rights, Louise Arbour, is with us today to present the report of the International Commission of Inquiry on Darfur. I will leave it to her to give a full description of the report's findings and recommendations. But let me stress that this report is one of the most important documents in the recent history of the United Nations. It chilling reading, and it is a call to urgent action.

The Commission has established that people in Darfur have been the victims of a perpetrated on a very large scale for wh Government of the Sudan and the Janjawe responsible — including war crimes and, very crimes against humanity. The Commission h found credible evidence that rebel forc responsible for serious violations, which may to war crimes.

The Commission strongly recommends Security Council immediately refer the situa Darfur to the International Criminal Court, to that those responsible for these heinous crimes to account. It is vital that these crimes not unpunished.

But the call to urgent action does not sto Even as the Commission was conducting its and since then, attacks on villages, the ki civilians, rape, pillaging and forced displacem continued in Darfur.

As others have said before me, while the Nations may not be able to take humanity to he must act to save humanity from hell. This demonstrates, beyond all doubt, that the past tw have been little short of hell on earth for ou human beings in Darfur. And despite the atten Council has paid to this crisis, that hell c today.

The international community, led by the must immediately find a way to halt the kill protect the vulnerable. The full range of option be on the table — including targeted sa stronger peacekeeping efforts, new measures to civilians and increased pressure on both side lasting political solution.

I will do my part to help develop such a But the power and the responsibility to do so about this grave crisis are in your hands. Once call on the Council to act urgently to stop furth and suffering in Darfur, and to do justice f whom we are already too late to save.

The President (*spoke in French*): I th Secretary-General for his statement.

Before giving the floor to Ms. Arbour to introduce the report of the International Commission of Inquiry, I would like, in my capacity as President of the Security Council, to express my thanks to the Translation Services, which worked so hard to produce such a voluminous report in all of the official languages of the Security Council under extreme time constraints. I am sure that all of my colleagues share my gratitude to the translators and all the others involved with the publication of this document.

I now give the floor to Ms. Louise Arbour, United Nations High Commissioner for Human Rights.

Ms. Arbour: The urgent need to stop the violence in Darfur is widely acknowledged. One way to reduce the carnage — not the only way, but a credible and legitimate way — is to remove from their positions those who orchestrate and execute it. The Security Council has taken the lead in this regard, through its call for the establishment of a Commission of Inquiry in resolution 1564 (2004).

The findings of that Commission, which the Council has before it and which I shall highlight today, provide a blueprint for action. The Commission's recommendations are not merely of retrospective importance; their implementation will not only do justice for the victims of the massive crimes committed in Darfur, but may actually contribute to reducing the exposure of thousands of prospective victims. That is the context in which today's call for action needs to be understood.

Following the adoption of resolution 1564 (2004), the Secretary-General appointed five outstanding international legal and human rights experts as commissioners. They brought with them a wealth of knowledge from different legal systems and expertise in international human rights, humanitarian and criminal law.

The Council will recall that the Commission's mandate was, first, to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties; secondly, to determine whether or not acts of genocide had occurred; and thirdly, to identify the perpetrators of such violations with a view to ensuring that those responsible were held accountable.

The Secretary-General requested my Office to assist the Commission in its work. My Office created a secretariat composed, in all, of more than 30 persons, including legal and human rights officers supporting the day-to-day work of the commissioners, and field-based teams composed of criminal investigators — including some with backgrounds in the area of sexual violence — military analysts and forensic experts.

The commissioners undertook two missions to the Sudan, including Darfur, as well as visiting relevant parties in Chad, Eritrea and Ethiopia. When the commissioners returned to Geneva following their first mission to the Sudan in November 2004, their investigative teams stayed in the country and remained on the ground — primarily in Darfur — for a total of eight weeks, until 19 January 2005. In addition to the material collected by the Commission itself, the Commission received information and evidence from a very broad range of sources, including Governments, non-governmental organizations and various international organizations. The Commission reported to the Secretary-General within three months, on 25 January 2005. Its findings are clear and thoroughly documented.

First, the Commission found that large-scale war crimes and crimes against humanity had been committed by Sudanese Government officials and by the Janjaweed militia. In particular, the Commission found that Government forces and militias had, throughout Darfur, engaged in indiscriminate attacks against civilians, murder, torture, enforced disappearances, the destruction of villages, rape, pillage and forced displacement. Those acts took place on a very large scale and in a systematic manner, and may therefore amount to crimes against humanity.

Consider the events in Kailek, a village in south Darfur populated mainly by people of the Fur tribe. Kailek and surrounding villages were attacked twice by Government forces and Janjaweed. Following the second attack, in March 2004, the villagers fled to the mountains, where they were hunted down by mounted Janjaweed. The military shelled the area and machine-gunned those in flight; some were captured and shot and killed.

For a period of approximately 50 days, up to 30,000 people were confined in a small open area in Kailek. They were subject to the most abhorrent treatment. Some men were singled out and summarily shot. There were reports of people being thrown onto fires and burned alive. Women and children were

separated out, confined in a walled area and periodically taken away by their captors to be raped; some of them were subjected to gang rapes.

As evidenced in the Commission's report, the case of Kailek is not unique in today's Darfur.

With regard to the rebels, the Commission found credible evidence that members of the Sudanese Liberation Army and of the Justice and Equality Movement were also responsible for serious violations that may amount to war crimes. In particular, those violations include cases of murder of civilians and pillaging. However, the Commission did not find a systematic or a widespread pattern to those violations.

Secondly, the Commission concluded that the Government of the Sudan had not pursued a policy of genocide; in other words, it did not find a demonstrated, specific intention, expressed as Government policy, to exterminate, in whole or in part, a national, ethnic, racial or religious group protected under the definition of genocide. However, the Commission recognized that only a competent court could determine, on a case-by-case basis, whether individuals, including Government officials, ordered or participated in atrocities motivated by the genocidal intent to exterminate a protected group, in which case they could be found guilty of the crime of genocide.

It is, in my view, important to stress that nothing in the Commission's report precludes the possibility of individuals being convicted of acts of genocide in relation to the events in Darfur. Personal criminal responsibility is not determined by Government policy. Furthermore, the Commission stressed that its conclusion that no genocidal policy had been pursued should not be taken as in any way detracting from or belittling the gravity of the crimes perpetrated.

Thirdly, the Commission identified 51 individuals suspected of having committed international crimes in Darfur. It decided to withhold their names from the public domain so as to respect the suspects' right to due process and to ensure the protection of witnesses from possible harassment or intimidation. The names of those suspects are contained in a sealed file that has been placed in the custody of the Secretary-General to be handed over to a competent prosecutor. In addition, the Commission handed to me a sealed file containing the evidentiary material it had collected, also to be delivered to a competent prosecutor.

The Commission reviewed steps taken b Sudanese Government and by judicial authorit address those crimes, and it concluded that they both unwilling and unable to act. It noted th justice system had been significantly weakened the past decade and that restrictive laws granting powers to the executive particularly undermine effectiveness of the judiciary.

Many of the laws in force in the Sudan contravene basic human rights standards, an Criminal Procedure Code contains provisions prevent the effective prosecution of these crim addition, many victims informed the Commissio they had little confidence in the impartiality Sudanese justice system and its ability to bri justice the perpetrators of the serious crimes com in Darfur, and many feared reprisals if they reso it.

Despite the magnitude of the crisis Government informed the Commission of ver cases of individuals who had been prosecuted o disciplined in the context of the situation in D which led the Commission to observe that the me taken so far had been grossly inadequate ineffective.

In my view, any new initiative proposed Government of the Sudan today to address these could not be supported in the light of the Commis conclusions. In particular, the extent of involvem Government officials — as documented b Commission — would appear to foreclose options.

The Commission carefully considered a range of other accountability measures. For rea have outlined, the Commission also exclude possibility of establishing mixed courts. Moreov Commission discounted the possibility of establishing an ad hoc international tribun expanding the mandate of an existing tribunal Commission concluded that ad hoc measures likely prove to be unduly time-consuming expensive.

The Commission strongly recommended th Security Council refer the situation in Darfur International Criminal Court (ICC). The Comm held the view that referral to the ICC was the credible way in which to bring alleged perpetrat justice, and it advised against other mea

Activated by Security Council referral, the ICC would be empowered to prosecute any persons for acts committed in Darfur that amount to any of the crimes listed under the Rome Statute.

Designed in part for the purpose of addressing crimes that threaten international peace and security, the International Criminal Court could be activated immediately. With an already existing set of well-defined rules of procedure and evidence, the Court is the institution best suited for ensuring speedy investigations leading to arrests and demonstrably fair trials.

In addition, the Commission urged that the Council act not only against the perpetrators, but also on behalf of the victims. It therefore proposed the establishment of an international compensation commission.

Murder, torture, enforced disappearances, the destruction of villages, rape and forced displacement continue to be committed against the people of Darfur. Those crimes have been — and, it appears, continue to be — perpetrated on a widespread and systematic basis by Government officials and Janjaweed leaders or those under their command. Members of rebel groups are also responsible for war crimes.

What is most urgently needed now are concrete measures to bring the current violence to an end and to restore security and dignity to the people of Darfur. The Commission, in my view, eloquently and powerfully argues that referral to the ICC is the best means by which to halt ongoing violations and to prevent future ones.

As stressed by the Commission, there are other immediate actions to be taken that the Council may wish to note, including granting full and unimpeded access by the International Committee of the Red Cross and by United Nations human rights monitors to all those detained by the Sudanese authorities in relation to the situation in Darfur.

The protection of witnesses and victims of human rights violations is urgently needed. I have written to the Government of Sudan with regard to these issues, and I have already appointed a Witness Protection Officer to follow up on any reports of threats or harassment of victims and witnesses perceived to have cooperated with the Commission.

Last September, the Council took an important step towards bringing justice to the people of Darfur by requesting the establishment of an international commission of inquiry. The Commission has discharged its task with professionalism and integrity, and has placed before you a proposed course of action aimed at ending the brutality in Darfur, ensuring that perpetrators of atrocities [illegible] recognizing the dignity [illegible].

The pursuit of justice is often said to clash with the pursuit of peace. Whatever the theoretical merit of that proposition, the findings of this Commission of Inquiry irrefutably demonstrate that there is no hope for sustainable peace in Darfur without immediate access to justice.

The President (*spoke in French*): I thank Ms. Arbour for her comprehensive briefing.

In accordance with the understanding reached in the Council's prior consultations, I invite Council members to informal consultations to continue our discussion on the subject.

The meeting rose at 4.45 p.m.